



Document	Medical Fitness Policy
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Version	2

Highgrade assure that the Education (Health Standards) (England) Regulations 2003 are observed, that is, agency staff ensure that those working directly with children have the health and physical capacity to do so.

During registration, Highgrade ensure that all candidates seeking work complete a Health Declaration Form that is confidential to High grade's records. The purpose of this form is to satisfy agency staff that work seekers have the physical and mental fitness to work with children in schools or other educational institutions.

Highgrade then ensure that this form is signed and dated by the candidate, please see the form attached. Should an illness come to light that could, put the safety of others, children and the candidate themselves at risk, Highgrade will contact relevant advisors for legal advice on how to move forward with this.

Following on from this, the consultant will also consult with their manager about any concerns displayed on the form. It is then the manager's decision to clear a candidate for work if appropriate. Under the Data Protection Act (1998), information about impairments is considered 'sensitive information', which means that it cannot be passed onto anyone else without explicit and informed consent. Candidates therefore have the right to ask that such information be treated as confidential when registering.

The Education (Health Standards) Regulations 2004 require all education practitioners to have the health and capacity to work in educational settings.

Should a worker declare an illness that may suggest they are unfit for work, Highgrade will require confirmation if the work seeker is fit to work from a medical practitioner i.e. GP or Occupational therapist.

If a work seeker declares a medical condition Highgrade may not advise the client of this prior to supply, unless we receive permission from the work seeker. The only time that this is permissible is if the work seeker is in a placement and Highgrade find that they have become unsuitable for the role due to medical fitness. Even with permission, Highgrade may not declare the condition but can withdraw the worker on 'medical grounds'.

If a teacher has been retired on medical grounds by the Department of Education then if this was after 1st April 1997 then this teacher will not be able to teach, even part time as they have been deemed medically unfit. However, if the teacher was retired before the 1st April 1997 then they may be able to work if they can show that they have the health and physical capacity to teach. They can show they are fit to work by obtaining a GP's letter confirming they are fit to teach. However, even if they are confirmed as fit to teach they will only be able to work for 2.5 days per week.

There are two issues here: (1) potential disability discrimination and (2) data protection.

Disability discrimination - Many disabled applicants fail to get to interviews because of disability discrimination that occurs at the recruitment stage. As a result, the Equality Act 2010 prohibits employers from making enquiries about an applicant's health or disability before offering work or before including the applicant in a pool of applicants from which the person intends to potentially select the job applicant for work.

The reference to "offering work" includes an offer to provide "employment services" which means that employment agencies and employment businesses are also not permitted to make health or disability enquiries before providing their services.

Exceptions

There are circumstances in which an employer can make such enquiries without falling foul of the Equality Act. These are where the information is sought:

- to establish whether a person will be able to undertake an assessment (e.g. an interview or test) or if any reasonable adjustment must be made to enable the person to undertake an assessment;
- to establish whether the person will be able to undertake a function which is intrinsic/essential to the role;
- for the purpose of monitoring diversity;
- for the purpose of positive action (as permitted) for disabled persons; or

- to determine whether a person has a particular disability in cases where the work is subject to a requirement that the candidate has a particular disability.

So for example, if a client instructs a recruitment business to recruit for a role working in a warehouse where heavy lifting is an intrinsic function of that job, it would be permissible for the business to ask applicants whether they have any health conditions which affects their ability to lift.

Intrinsic function: REC engaged with Equality and Human Rights Commission (EHRC) in early 2019 to agree text regarding how and when agencies can ask health related questions.

“in order to rely on the intrinsic function exception set out in 60(6)(b) of the Act, employers, employment agencies and employment businesses should clearly set out what the intrinsic functions of the post/placement are so that applicants only disclose health information that is relevant to their ability to carry them out. In addition, any health and disability questions asked for this purpose i.e. to determine whether a candidate is able to carry out an intrinsic function of the role, should take into account their ability to carry out the intrinsic function with reasonable adjustments in place.

If it is not possible for a recruitment business or agency to identify on their registration forms (or a relevant section of their website etc.) what the intrinsic functions of the different posts/placements on offer are, they should instead ask these questions post registration so as to ensure that they do not breach section 60 of the Act. Section 60 prohibits health questions from being asked pre-offer of employment or pre-registration, it does not prevent employers and employment agencies from asking health questions post offer or post registration. However, as employers and recruitment agencies will still be subject to the wider disability discrimination provisions contained within the Equality Act 2010 i.e. in respect of direct discrimination, indirect discrimination, the duty to make reasonable adjustments etc., best practice suggests that only health questions that are relevant and necessary to the job on offer should be asked.”

The text in Options A has been agreed with the EHRC.

We ask health related questions after a job applicant has been successfully registered with your agency and after you have identified that there is one or more tasks which are intrinsic to the role.

At whichever stage you ask this question you must set out clearly what the intrinsic tasks are so that the individual can assess their ability to perform them.

Any identified intrinsic functions should be readily accessible to the applicant. For example, on a section of the agency's website which the applicant is signposted to in the registration/application form or on a clearly marked section of the job description.

A verbal conversation will take place with our clients and the intrinsic functions of the role will be discussed. The results of the conversation and the agreed terms (adjustments accommodated by the Hirer) will then be set out on the Assignment to Details form which is sent to the Hirer and the Client.

Data protection - Medical and health information is sensitive personal data for the purposes of the Data Protection Act 2018 and the EU General Data Protection Regulation and must be collected, processed and stored correctly. Highgrade operate as a Data Controller and information is stored securely and correctly.

Highgrade Recruitment Ltd provides work-finding services to its clients and work-seekers. We must process personal data (including sensitive personal data) so that we can provide these services – in doing so, we act as a data controller. This is why we have asked for your personal data upon registration. When we process your personal data we must do so in accordance with data protection laws. Those laws require us to give you a Privacy Statement to explain how we manage your personal data. Our Privacy Statement is available upon request.